

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DAMIEN DREIS,

Plaintiff,

v.

DEARBORN NATIONAL LIFE
INSURANCE COMPANY, a foreign
corporation,

Defendant.

NO. 2:14-CV-00620-MJP

AGREED PRETRIAL ORDER

Trial Date: September 8, 2015

Under Local Court Rule 16 and the Court's Minute Order Setting Trial Dates & Related Dates (Dkt. 33 and 34), the parties submit this Agreed Pretrial Order:

I. JURISDICTION

Dearborn National is an insurance company organized under the laws of the State of Illinois, with its principal place of business in Illinois. Plaintiff is a resident of Washington State. Plaintiff filed suit in King County Superior Court on March 25, 2014. Dearborn National removed the case to the United States District Court, Western District of Washington, on April 25, 2014, citing 28 U.S.C. § 1332(a) and § 1441(a). Plaintiff has not objected to the jurisdiction of the federal court. Accordingly, jurisdiction is appropriate based on diversity of citizenship of the parties.

II. CLAIMS AND DEFENSES

Plaintiff will pursue the following claims at trial:

1. Negligent misrepresentation by affirmative misstatement.
2. Negligent misrepresentation by failure to disclose.
3. Fraud.

Defendant will pursue the following claims at trial:

1. Plaintiff's Complaint fails to state claims upon which relief may be granted.
2. Plaintiff's claims are barred in whole or in part by his own acts and omissions (contributory negligence).

III. ADMITTED FACTS

1. Mr. Dreis applied to work at Dearborn National on May 10, 2010.
2. Dearborn National offered Mr. Dreis a position as Regional Sales Manager I on May 11, 2010.
3. During Mr. Dreis's employment, he was classified as Job Grade 18 under the employee position classification system.
4. Had Mr. Dreis remained employed by Dearborn National on February 19, 2013, Dearborn National would have offered him a severance payment of \$607,779.84 as consideration for his entry into a release of claims against Dearborn National, HCSC, and its related companies.
5. At time of Mr. Dreis's resignation, Dearborn National had prepared a draft packet of information to provide to him about the RIF in the event that he remained employed at Dearborn National on February 19, 2013.
6. Mr. Dreis accepted a job at Guardian on January 18, 2013.
7. Mr. Dreis began his new job at Guardian National Life Insurance ("Guardian") on February 5, 2013.

IV. ISSUES OF LAW

Plaintiff's proposed issues of law:

1. Whether Dearborn is liable for negligent misrepresentation by affirmative misstatement.
2. Whether Dearborn is liable for negligent misrepresentation by failure to disclose.
3. Whether Dearborn National is liable for fraud.
4. Whether Dearborn National withheld or diverted any portion of Mr. Dreis's wages under RCW 49.48.010 and/or RCW 49.46.090.
5. Whether Plaintiff is entitled to pre-judgment interest.
6. Whether Plaintiff is entitled to fees and costs under RCW 49.46.090 and/or RCW 49.48.030.

Defendant's proposed issues of law:

1. Whether Plaintiff's own negligence contributed to his alleged damages, if any.
2. Whether Plaintiff is barred from seeking damages for alleged emotional distress on his negligence claims. *E.g., Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 447–48, 815 P.2d 1362 (1991); *see also* Restatement (Second) of Torts § 552B ("The damages recoverable for a negligent misrepresentation are those necessary to compensate the plaintiff for the *pecuniary loss* to him of which the misrepresentation is a legal cause.") (emphasis added).
3. Whether Dearborn National is entitled to attorney's fees and costs as a result of Plaintiff bringing and/or continuing to maintain claims for breach of contract and breach of the duty of contractual good faith and fair dealing based on Dearborn National policies that Plaintiff knew he had never read during his employment, and notwithstanding Plaintiff's knowledge of a prominent disclaimer that such policies were not contractual in nature.

V. WITNESSES

On behalf of Plaintiff:

WITNESS	NATURE OF TESTIMONY	STATUS
Damien Dreis c/o PWRLK 1501 Fourth Ave, Suite 2800 Seattle, WA 98101 Ph. – (206) 624-6800	Plaintiff Damien Dreis will testify concerning his employment with Dearborn, the circumstances surrounding his departure from Dearborn, as well as any facts that pertain to the claims at issue in this lawsuit.	Will testify
Larry Meitl c/o Littler Mendelson, P.C. One Union Square 600 University St Suite 3200 Seattle, WA 98101 Ph. –(206) 623-3300	Mr. Meitl was Dearborn's Regional Vice President of the West Region, and Mr. Dreis's boss. Portions of Mr. Meitl's video deposition testimony may be played during Plaintiff's case in chief or in rebuttal.	Will testify
James Healy (303) 919-1095	Mr. Healy held a comparable sales position to Mr. Dreis during the relevant time period. Mr. Healy will testify concerning his employment with Dearborn, the circumstances surrounding his departure from Dearborn, as well as any facts that pertain to the claims at issue in this lawsuit.	Will testify
Brian Griffin c/o Littler Mendelson, P.C. One Union Square 600 University St Suite 3200 Seattle, WA 98101 Ph. –(206) 623-3300	Mr. Griffin was the National Vice President of Sales at Dearborn during the relevant time period. Portions of Mr. Griffin's video deposition testimony may be played during Plaintiff's case in chief or in rebuttal.	Possible witness only
Karen Kozlowski c/o Littler Mendelson, P.C. One Union Square 600 University St Suite 3200 Seattle, WA 98101 Ph. –(206) 623-3300	Ms. Kozlowski was Dearborn's Senior Director of Human Resources during the relevant time period. Portions of Ms. Kozlowski's video deposition testimony may be played during Plaintiff's case in chief or in rebuttal.	Will testify
David Burghard, Dearborn's CR 30(b)(6) witness c/o Littler Mendelson, P.C. One Union Square 600 University St Suite 3200	Mr. Burghard was designated as Dearborn's 30(b)(6) corporate representative. Portions of Mr. Burghard's video deposition testimony may be played during Plaintiff's case in chief or in rebuttal.	Will testify

1	Seattle, WA 98101 Ph. -(206) 623-3300		
2	Michelle Vosdoganes c/o Littler Mendelson, P.C. One Union Square 600 University St Suite 3200 Seattle, WA 98101 Ph. -(206) 623-3300	Ms. Vosdoganes was part of Dearborn's human resources department and worked with Ms. Kozlowski during the relevant time period. Portions of Ms. Vosdoganes's video deposition testimony may be played during Plaintiff's case in chief or in rebuttal.	Possible witness only

On behalf of Defendant:

8	NAME	ADDRESS/PHONE NUMBER	SUBJECTS OF INFORMATION	STATUS
9	Larry Meitl	8541 Hunts Point Ln. Hunts Point, WA 98004 Ph: (206) 484-8435	At all times relevant to this case, Mr. Meitl was the Regional Vice President of Sales for the Western Region and Plaintiff's immediate supervisor. He will testify about the Plaintiff's resignation, and about the notifications regarding Dearborn's RIF that were issued on February 19, 2013.	Will testify.
14	Brian Griffin	To be provided upon request	At all times relevant to this case, Mr. Griffin was the Vice President of Sales at Dearborn National and/or the Divisional Senior Vice President of Sales, with national oversight of Sales at Dearborn National. He will testify about the timing of Plaintiff's resignation, and about the notifications regarding Dearborn's RIF that were issued on February 19, 2013.	Will testify.
19	Karen Kozlowski	To be provided upon request	Ms. Kozlowski was the Human Resources Director at Dearborn National at times relevant to this case. She will testify about the RIF process at Dearborn.	Will testify.
21	David Burghard	c/o Littler Mendelson, P.C.	Mr. Burghard was the Executive Director of Sales Operations and Corporate Communications at Dearborn National during periods relevant to the Plaintiff's claims. He may testify about the timing of Plaintiff's resignation, and about the notifications regarding Dearborn's RIF that were issued on February 19, 2013.	Possible witness only.
26	Nino Lazaro	c/o Maggie W. Trinh Farbstein & Blackman	Mr. Lazaro held the same position at Dearborn National as did the Plaintiff	Will testify.

	411 Borel Ave. Suite 425 San Mateo, CA 94402 Ph: (650) 554-6200	during periods relevant to this case. He will testify about the Plaintiff's statements to him, communications from Dearborn National, and the administration of the 2013 RIF. Depending on Mr. Lazaro's availability, excerpts of his deposition may be read in lieu of live testimony.	
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VI. EXHIBITS

Plaintiff's list of proposed trial exhibits:

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
Plaintiff's Exhibits				
1	Letter – DREIS00052–53	X		
2	Email – DNIC 003546		Fed. R. Evid. 401, 402, 403	
3	Email – DNIC 003592		Fed. R. Evid. 401, 402, 403	
4	Email with attached spreadsheet – DNIC 002869–72	X		
5	Email with attached spreadsheet – DNIC 003800–08	X		
6	Meeting agenda – DNIC 004024–27		Fed. R. Evid. 401, 402, 403	
7	Email – DNIC 000273		Fed. R. Evid. 401, 402, 403; cumulative	
8	Email – DNIC 001168		Fed. R. Evid. 401, 402, 403	
9	Email with attached spreadsheet – DNIC 003551–55	X		
10	Spreadsheet – DNIC 005347-50	X		
11	ADEA report – DNIC 001632–51		Fed. R. Evid. 401, 402, 403	
12	Letter – DNIC 000652	X		
13	Email – DNIC 004902		Fed. R. Evid. 401, 402, 403	
14	Meeting agenda – DNIC 000678–80		Fed. R. Evid. 401, 402, 403	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
15	Email with attached spreadsheet – DNIC 005825–27	X		
16	Email from Damien Dreis to Jim Healy – No Bates	X		
17	Email with attached spreadsheet – DNIC 005188–95		Fed. R. Evid. 401, 402, 403	
18	Email – DNIC 00068–89	X		
19	Email – DNIC 004262	X		
20	Email with attached “Talking Points” – DNIC 005165–67	X		
21	Email with attached “Organizational Design & Transition Plan” – DNIC 004636–41		Fed. R. Evid. 401, 402, 403	
22	Email with attached spreadsheet – DNIC 002971–75	X		
23	Email – DNIC 004176		Fed. R. Evid. 401, 402, 403	
24	Email from Jim Healy to Dave Burghard – No Bates		Fed. R. Evid. 401, 402, 403	
25	Email with attached spreadsheet – DNIC 004154–57	X		
26	Email with attached “Call List” – DNIC 004529–35	X		
27	Letter – DREIS00023	X		
28	Email – DNIC 001098–99	X		
29	Email – DNIC 000695–96	X		
30	Email – DNIC 000592	X		
31	Email – DNIC 004543		Fed. R. Evid. 401, 402, 403	
32	Email – DNIC 000612	X		
33	Email – DNIC 006312–13		Fed. R. Evid. 401, 402, 403	
34	Email – DNIC 000593–95	X		
35	Email – DNIC 006596		Fed. R. Evid. 401, 402, 403	
36	Email between Jim Healy and Michelle Vosdoganes – No Bates		Fed. R. Evid. 401, 402, 403; Fed. R. Evid. 802	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
37	Reduction-in-Force Acknowledgment Form for Damien Dreis – DNIC 001671–76	X		
38	Reduction-in-Force Policy – DNIC 000006–15		Fed. R. Evid. 401, 402, 403	
39	Separation Policy Offer DNIC 000016	X		
40	Organization Overview – DNIC 008014	X		
41	Group Sales Incentive Plan – DREIS00011–22	X		
42	Health Care Service Corporation Job Description – DNIC 000058–59	X		
43	Paystubs – No Bates; DREIS00626	X		
44	Email – DNIC 003574		Fed. R. Evid. 401, 402, 403	
45	February and January Roll-Up Chart – DNIC 007833–37		Fed. R. Evid. 401, 402, 403	
46	Spreadsheet – DNIC 001169–75		Fed. R. Evid. 401, 402, 403	
47	Notice of Videotaped Deposition of Dearborn National Life Insurance Company Pursuant to Fed. R. Civ. P. 30(b)(6); Subpoena in a Civil Case – No Bates		Fed. R. Evid. 401, 402, 403	
Defendant's Exhibits				
101	Application for Employment – DNIC 000031–34	X (if private information is redacted)		
102	Sales Executive job description – DNIC 000060–62	X		
103	Policy receipt acknowledgment – DNIC 000049		FRE 402, 403	
104	December 13, 2012 email – DREIS00232	X		
105	December 13, 2012 email - DREIS00230	X		
106	Plaintiff's discovery responses – No bates (Ex. 10 to Dreis deposition)		FRE 403	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
107	"Dear colleagues" letter – DNIC 000002–03		FRE 602; 802; 403 (cumulative)	
108	Email – DNIC 005744		FRE 106 (missing attached spreadsheet)	
109	Email and attached spreadsheet – DNIC 002971–75		FRE 403 (cumulative to Ex. 22)	
110	Email – DNIC 000018	X		
111	Letter – DNIC 000017		FRE 403 (cumulative to Ex. 27)	
112	Termination of Employment Policy – DNIC 000140–43	X		
113	Email – DNIC 001615–16		FRE 802; 403	
114	WARN Notice – DNIC 000226	X		
115	Reduction-in-Force Acknowledgment Form and Separation Package – DNIC 1671–76	X		
116	Dear Colleagues letter – DNIC 000004–05		FRE 602; 802; 403	
117	RIF Restructuring Summary form – DNIC 000015	X		
118	FYI Blue front page – DNIC 000001		FRE 402; 403	
119	Resume – DNIC 000050	X		
120	Resume – DREIS00264	X		
121	Meitl RIF packet – MEITL00001–36	X		
122	Itinerary – DNIC 000599–600	X		
123	Email – DNIC 001102		FRE 402; 403	
124	WARN Notice – DNIC 000223	X		
125	WARN Notice – DNIC 000259	X		
126	Email – DNIC 000702–03	X		
127	Dear Colleagues letter (email form) – DNIC 002876	X		
128	Email – DNIC 004906	X		


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VII. STIPULATIONS

The parties have stipulated that, at or before the close of each court day during trial, each party shall disclose to the other party the identity of all witnesses, other than witnesses offered solely for impeachment, that the party intends at that time to call to testify the following day. Dkt 38; 42.

However, nothing in this stipulation prevents a party from calling a witness to testify if the witness is not so disclosed but the party later determines that a witness's testimony is necessary to its case. In that event, the party shall make the witness known to the other party as soon as practicable.

DATED this 8 day of Sept, 2015.


Honorable Marsha Pechman
United States District Judge

Dated: August 19, 2015

Counsel for Plaintiff Damien Dreis

/s/Mallory C. Allen

/s/ Michael S. Wampold

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Dated: August 19, 2015

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/s/ Thomas P. Holt

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown below I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

Dated: August 19, 2015

/s/ Elizabeth Chandler

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